Assembly Select Committee on Alcohol and Drug Abuse
Testimony of Judge Stephen Manley
October 4, 2007

Thank you for the invitation and opportunity to testify before this Committee. My remarks are my own and do not reflect the views or position of the Superior Court, the Courts of California, the Administrative Office of the Courts, nor the Judicial Council of California. I base my comments on my many years of experience directly supervising substance abusing offenders, including parolees, as well as offenders who are mentally ill, supervising Judges who work with substance abusing defendants, developing and implementing programs that address substance abuse through the Courts, as well as working in behalf of sentencing reform.

I have been asked to address the question of what policies and practices I would recommend that the State implement to address and reduce recidivism among substance abusing offenders.

First, we must accept the fact that research and sound evidence support the fact that punishment in and of itself will not reduce drug abuse, nor reduce recidivism among those who use and possess illegal substances.[1]

Second, offenders who are convicted of felony possession of drugs for personal use continue to be sent to prison. For example, failing the Substance Abuse and Crime Prevention Act program (commonly referred to as "Proposition 36", and hereafter referred to as "SACPA") that mandates treatment in lieu of incarceration at the initial sentence for thousands of offenders convicted of felony drug possession including parolees results in offenders being returned to prison or jail for the continued use of drugs, and other technical violations of parole and probation that are common to all substance abusing offenders who are addicted to or continue the use of street drugs and are enmeshed in the "drug lifestyle".

At the same time, other offenders who have committed low level non-drug felonies who are substance abusers suffer the same fate due to their continued use of drugs.

It is important to note that California does not have a substantially larger population of non-violent offenders imprisoned than other states. In fact, two-thirds of the growth of the prison population has been from violent offenders while only 10% has been from drug offenses since 1994.[2]

However, California has incarcerated substantial numbers of parolees for violations such as failure to refrain from drugs, or inability to maintain employment.[3]

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[1] Valentine, D. (2006) *Alternative Sentencing and Strategies for Successful Prisoner Reentry* Institute of Public Policy, Truman School of Public Affairs, University of Missouri.
[2] Petersilia, J., and Weisberg, R (2006). *California's Prison System Cannot Solve Prison Crisis Alone.* UC-Irvine, Center for Evidenced Based Corrections.
[3] Petersilia, J. (2003) .*When Prisoners Come Home: Parole and Prisoner Reentry*. Oxford University Press.

States such as Washington do not return offenders to prison for technical violations; rather the offender is dealt with in the community through counseling, training, a drug court, or similar tactic.

Third, treatment and accountability to enter and remain in treatment do in fact reduce drug use and recidivism. [4]

What needs to be done

1) California should not take the simplistic approach of substituting "treatment time for "prison time." The assumption that an early release of a prisoner with a requirement of mandatory participation in a 90 day local custody treatment program followed by 90 days in a 24 hour residential program simply does not work because this approach ignores the fact that there is a continuum of care that is necessary in substance abuse treatment and recovery, or treatment will not be successful. Quick and arbitrary solutions tied to what would otherwise be incarceration time will more likely be viewed by an addict as a less severe form of "punishment" that must be completed day for day, rather than a process that may well require that the offender to continue in treatment and recovery well beyond a six month period.

   One of the important lessons learned in the implementation of SACPA was that the use of residential treatment should be reserved for those defendants who are very frequent users. Residential treatment has been particularly effective with heavy methamphetamine users.[5]

   However, to assume that all offenders need residential treatment, ignores the variation in use and treatment needs and best practices in placing offenders at the right level of treatment in a continuum of care in which a defendant moves from one level of treatment to another based on progress in treatment or, in the alternative, relapse.

   A "one-size-fits-all approach" is not based on science nor best practices and inevitably leads to a misallocation of resources, failed opportunities for success, and even situations in which our well-intentioned actions have frequently made people worse.[6]

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[4] Valentine, D. (2006) *Alternative Sentencing and Strategies for Successful Prisoner Reentry*, Institute of Public Policy, Truman School of Public Affairs, University of Missouri.
[5] UCLA (2006), *Evaluation of Substance Abuse and Crime Prevention Act, 2005 report*, University of California Los Angeles Integrated Substance Abuse Programs.

[6]Marlowe at al. (2004). *Drug dependence is omnigenus: The disease analogy and criminal justice policy*. Offender Substance Abuse Report, 4.

2) The first step is to move away from "traditional sentencing" whether it be following the determination of guilt, or on a violation of probation or parole that simply results in new jail or prison terms and/or return to jail or prison, or simply release with no meaningful follow-up to address the needs of the defendant, while we await the commission of a new crime.

   We must develop a "true" risk and need assessment process for each and every offender that takes into account both the needs of the offender and his or her risk to the community, regardless of whether or not that offender is under the jurisdiction of the courts or parole.

The critical point is to accept the fact that a good needs and risk assessment will result in placing an offender at the level of treatment and supervision that he or she needs, and, in fact will exclude those offenders who have no treatment needs and are primarily a substantial risk to society.

If you think of a "system" that is a continuum with diversion at the low end and drug courts at the high end, you are then in a position to place offenders at the level of treatment and supervision that they need. For example, a prisoner or parolee who is a low risk for public safety and has very low treatment needs should be placed in a drug diversion program that relies heavily on drug testing and meeting other needs of the offender, such as life skills and employment or educational services, while a parole violator who has high needs and scores high on the level of risk should be placed in a Drug Court setting that is very structured and closely monitors participants.

Unfortunately, attention to risk-and-needs profiles has not taken place in California and little, if any attention, is given to this critical element in the criminal justice system. To the extent that offenders are classified at all, authorities have typically focused almost exclusively on risks to the exclusion of needs. Moreover, risk has often been equated, wrongly, with the statutory offense classification for the current crime or prior offenses. Although offense history is certainly relevant to this determination, it is not dispositive and much additionally important information is often lost or ignored. Finally, risk has often been assumed, wrongly, to equate to risk for violence or dangerousness, which may lead some drug offenders to be unnecessarily denied access to community-based services.[7]

If the needs and risk assessment instrument is utilized from the time of first arrest and conviction forward, it would follow the individual offender, and be available to be updated if the offender re-enters the system, and that instrument should be available in all parts of the criminal justice system: courts, probation, jail, prison, and parole.

In sum, the first step that policy makers in the Legislature and Administration need to take is to mandate a "risk/needs" assessment of each offender in prison or on parole

[7] Gendreau et al. (1996). *A meta-analysis of the predictors of adult offender recidivism: What works!* Criminology, 34; Marlowe et al. (2003). *Amenability to treatment of drug offenders.* Federal Probation, 67.

before releasing that offender to the community in order to maximize good outcomes and reduce recidivism and substance abuse.

3) Policy makers in the Legislature and Administration must take the necessary steps to end the separation of parole services operated by the state and probation services operated by the counties as well as treatment and rehabilitation services that are duplicated at these two levels of government.

   We will not improve outcomes and reduce recidivism if the State simply outbids the Counties in purchasing the existing services at the county level and forcing parolees "in" and probationers "out" of our present system of Alcohol and Drug Programs that is presently unable to meet the treatment and rehabilitation needs of defendants who are guaranteed treatment under SACPA, let alone meet the needs of parolees.

   A good example of the failure in operating two separate systems is the SACPA program itself in which treatment must be provided by the counties, while supervision is provided by the state. Under this bifurcated system, those offenders with the poorest outcomes are parolees in comparison to all others.[8] This should not come as a surprise to anyone.

4) What does a better system look like? SB 391 (Ducheny) passed by the Legislature and now on the Governor's desk takes a first step in the direction of improving outcomes and reducing recidivism.

   Rather than have parole agents work through the existing State system of the Board of Parole Hearings, this statute would provide the alternative of an interim sanction remedy.

   This bill would authorize the Department of Corrections and Rehabilitation to create a Parole Violation Intermediate Sanctions program, and authorize certain eligible parolees who would otherwise be referred to the Board of Parole Hearings for revocation of parole and returned to prison for a violation of parole to be admitted to the program in lieu of revocation. The program would be modeled after a collaborative court or drug court model, including a hearing officer, frequent appearances in court by the parolee, requirements that the parolee attend treatment or rehabilitation programs, coordination between the hearing officer, parole agents, and representatives from the treatment and rehabilitation programs, and sanctions for the parolee upon failure in the program.

[8] UCLA (2006), *Evaluation of Substance Abuse and Crime Prevention Act, 2005 report*, University of California Los Angeles Integrated Substance Abuse Programs.

What this approach offers is a return to "community corrections and rehabilitation." Rather than the highly bureaucratic and rule driven Board of Parole Hearings, parole agents would have direct access to a Judge whose job it would be to place the parolee based on a risk/needs assessment in the appropriate local program using local resources paid for with correction dollars that would expand capacity rather than buy existing capacity. This approach simplifies the process of working directly with and motivating the parolee who faces revocation with overall responsibility and supervision in the hands of a judicial officer trained and experienced in working with substance abusing offenders.

5) Assuming the existence of a "risk/needs" assessment for every State prisoner considered for release into the community as well as every parolee, another very promising practice is the HOPE program that was created in Honolulu Hawaii with initial funding from the Office of National Drug Control Policy.

In 2004, the Judiciary launched a pilot program to reduce probation violations by drug offenders and others at high risk of recidivism. This high-intensity supervision program, called **H**awaii's **O**pportunity **P**robation with **E**nforcement, or HOPE, is the first and only such program in the nation. Probationers in HOPE Probation receive swift, predictable, and immediate sanctions - typically resulting in several days in jail - for each detected violation, such as detected drug use or missed appointments with a probation officer.

In HOPE Probation, defendants are clearly warned that if they violate the rules, they go to jail. Defendants are required to call a hotline each weekday morning to find out if they must take a drug test that day. Random drug testing occurs at least once a week for the first two months.

If probationers test positive, they are arrested immediately. If they fail to appear for the test or violate other terms of probation, warrants for their arrest are issued immediately. Once they are apprehended, a probation modification hearing is held the same day or the next working day, and violators are typically sentenced to a short jail term. The jail time may increase for subsequent violations and repeat offenders are often ordered into residential treatment.

The bottom line to the success of this program is "immediate" response, rather than waiting weeks and months for a process similar to our existing Board of Parole Hearings process to unfold.

Moreover, for a very inexpensive program, the documented results to date are outstanding in terms of reducing recidivism and drug use as well as reducing the number of offenders sent to prison.

"For the 126 defendants who have been in HOPE Probation for at least three months, their missed appointments rate has decreased by 68 percent and their positive drug test rate has dropped by 86 percent. For those offenders in HOPE the longest, 22

months, the decrease is even larger: 84 percent fewer missed appointments, and 91 percent fewer positive drug tests. For the two groups that have been tracked the longest - the original 34 HOPE cases in Study Group 1 and 78 cases in an otherwise directly comparable Control Group (no HOPE conditions), only one (2.9 percent) of the former, as compared to five (6.4 percent) of the latter, had his probation revoked and was sentenced to prison."[9]

This program should be replicated for parolees in California using the proven model developed in Hawaii.

6) Prisoner's permitted early release and parolees who are mentally ill or suffer from co-occurring disorders, should not stay in the "business as usual" parole and Board of Parole Hearing system. These offenders are the most difficult to treat and supervise under the State parole system. They are also the most expensive target population for the Department of Corrections and Rehabilitation, and the existing system does not appropriately respond to their special needs for treatment and rehabilitation, and they are highly likely to recidivate while on parole as well as when they are finally released from parole.

   For this community alternative to work successfully it is critical to step away from the traditional system of focusing "solely" on mental illness, or, in the alternative, "solely" on substance abuse. This approach only perpetuates recidivism, we do not meet the needs of the individual, and defendants do not get better.

   These offenders should be given the community alternative of a Mental Health Court that has been created in SB 851 (Steinberg). However, that model should be expanded at the community level to serve all parolees including those with co-occurring disorders, and not be confined solely to parolees who are also on Probation.

   The essential elements of a Mental Health Court relating to parolees and prisoners being released who are mentally ill are as follows:

   (1) Creation of a dedicated calendar that will lead to placement of as many mentally ill offenders, including those with co-occurring disorders, in community treatment, as is feasible and consistent with public safety.
   (2) Leadership by a judicial or hearing officer that is ongoing with the same group of offenders.
   (3) Enhanced accountability by combining judicial supervision with rehabilitation services that are rigorously monitored and focused on recovery.
   (4) A problem solving focus.
   (5) A team approach to decision-making.
   (6) Integration of social and treatment services.

[9] Evaluation Report, Hawaii State Judiciary, 2006.

(7) Direct judicial or hearing officer supervision of the treatment process and the offender.

I suggest to you that what I see every day in the courtroom and in the courtrooms of my colleagues is this reality: A very substantial percentage of all defendants who are mentally ill and who are in our jails and prisons in California are also substance abusers. National statistics bear this observation out. In a recent report that examined our prison and jail populations across the Country by the Bureau of Justice Statistics, 49% of State inmates who were mentally ill had a high rate of substance abuse.[10]

Research tells us that the only way to effectively work with individuals who have co-occurring disorders is to treat both conditions at the same time.

However, that is not what we do under the present operation of parole. We continue to have a separation between substance abuse and mental health treatment. We do not have a single needs/risk assessment tool for co-occurring disorders, collocation of substance abuse and mental health treatment for this group of individuals, nor treatment plans that address each disorder together.

I urge this Select Committee to make the following recommendations to the Legislature and Governor:

(a) Recognize that substance abuse is not only a co-occurring disorder, but an "expectation" in mental illness and that parolees must be treated for both disorders.

(b) Mandate the Department of Corrections and Rehabilitation to create community Mental Health Courts modeled on SB 851 and place mentally ill parolees as well as parolees with co-occurring disorders in these courts upon their release, as a community alternative.

(7) The Legislature must continue to give consideration to the creation of a Sentencing Commission through negotiation and compromise that will be able to focus on Intermediate Punishment and Community Sanctions.

We are at the point in California when we can no longer ignore the success of these commissions in other states that turn the focus away from prison as the only alternative, and utilize a common sense approach, consistent with public safety, of community punishment and rehabilitation at every stage of the criminal justice system for eligible offenders. These states target non-violent offenders and felons who would not receive an extensive prison sentence in real prison days for a sentence or parole violation (six months incarceration for example).

[10] *Bureau of Justice Statistics Report of Prison Populations*, 2006.

Evidence from one such state, North Carolina, suggests that this approach works. During the first full year of operation, in 1995, under a sentencing commission, 80% of violent felons received prison sentences, up from 67% in 1993. In contrast, 23% of non-violent felons were sent to prison, down from 42% two years earlier.[11]

I suggest that a sentencing commission can be shaped to concentrate on achieving the results found in States like North Carolina, and that by targeting non-violent low-level offenders who are on parole or leaving prison, the high recidivism rate of parolees being returned to prison will be reduced.

(8) Finally, I suggest that in terms of methamphetamine abuse in California, and the substantial increase in use of this substance by women in the childbearing years, we need to develop treatment reentry programs that specifically target this population. The extremely high costs of foster care alone, coupled with the cost of prison confinement should lead us to recognize that we must change our strategy from one of repeatedly and in nearly all cases removing children from the home, to a system that applies the proven principles of the Drug Court model to hold these offenders accountable through treatment and drug testing with a goal of family reunification of children with their parents. In addition, hospitals and health care professionals should be held accountable to report and intervene with these substance abusers at the earliest possible point in time. One viable approach is to create "Pre-Dependency Court" interventions.

Respectfully submitted,

Judge Stephen Manley

[11] Valentine, D. (2006) *Alternative Sentencing and Strategies for Successful Prisoner Reentry* Institute of Public Policy, Truman School of Public Affairs, University of Missouri.